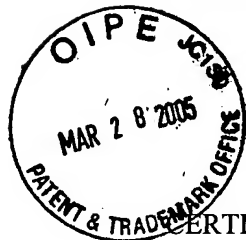


03-29-05

ITW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



CERTIFICATE OF MAILING BY EXPRESS MAIL

DATE: March 28, 2005
EXPRESS MAIL NO.: ED507929505US

I hereby certify that the enclosed Transmittal for filing a Petition Under 37 CFR 1.181 for Non-Provisional Patent Application Entitled: **Device and Method for Cleaning A Landscape Surface**, Serial No. 10/649,978 being filed on the date indicated above and the attached documents (stated below), are being deposited as "Express Mail" on this date with the United States Postal Service in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Documents Enclosed Include:

1. Petition Under 37 CFR 1.181 (12 pages in duplicate);
2. Exhibits A-C (9 pages);
3. Copy of Supplemental Amendment mailed on March 28, 2005 (11 pages);
4. Certificate of Mailing; and
5. Return Receipt Postcard

By: Lawrence R. Oremland
Lawrence R. Oremland
Signature of person depositing above mentioned documents

Certificate of Mailing or Transmission

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage for Express Mail in an envelope addressed to, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/649,978	Confirmation No.	6716
Applicant	:	David N. Nelson		
Filed	:	August 26, 2003		
TC/A.U.	:	3673		
Examiner	:	Lisa M. Saldano		
Docket No.	:	6044.102US		
Customer No.	:	N/A		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Petition Under 37 CFR 1.181

Sir:

Under the provisions of 37 CFR 1.181 applicant respectfully petitions that the final rejection dated January 26, 2005 be withdrawn, and either that a supplemental amendment that being filed concurrently with this petition (and a copy of which accompanies this petition) entered, or that any subsequent action that is based on Bunch US Patent 5,655,245, the principle reference relied upon in the final rejection, be required to be made non final.

Fees: It is not believed any fees are due in connection with this filing, but if any are due, it is respectfully requested that they be charged to deposit account no. 50-1905. A duplicate of this page is attached.

I. Summary of Applicant's petition.

The Bunch patent was cited by Applicant in an IDS filed prior to a first office action, and was reviewed and not applied in a first office action that combined 2 references under the provisions of 35 USC 103. In an amendment responsive to the first office action, language was added to the claims to more explicitly define the same subject matter the Applicant had been presenting from the beginning. The final rejection applies the Bunch patent against some of the amended claims under the provisions of 35 USC 102 and against others under the provisions of 35 USC 103. Undersigned and the examiners have had several phone conversations regarding Bunch, and the propriety of the final rejection. Since the examiners maintain that the final rejection was proper, Applicant has no alternative but to raise this issue by petition. Applicant respectfully submits that the record shows that Bunch was the best reference, was not cited in the first office action, as is believed required by MPEP 904.03, and has been cited in the final rejection in a manner that will effectively deny applicant a full and fair hearing with respect to that reference, as provided by MPEP section 706.07, by foreclosing applicant's right to amend or argue the claims against Bunch, to reach a clear issue (MPEP 706.07). The accompanying supplemental amendment, if entered, will at least enable applicant to present amendments and arguments, in writing, in light of the examiners' position on Bunch. Therefore, it is respectfully requested that the final rejection be withdrawn, and either the accompanying amendment entered or any subsequent action that is based on Bunch be required to be non final.

II. Statements of Facts

1. The above identified application was filed August 26, 2003.
2. An IDS was filed by Applicant on December 23, 2003. Bunch US Patent 5,655, 245 (“Bunch”) and Pink et al US Patent 5,535,479 (“Pink”) were among the materials submitted by Applicant with the IDS.
3. A first office action was mailed on June 8, 2004. In the office action, the claims were rejected under the provisions of 35 USC 103, with Pink as the primary reference. Accompanying the first office action was applicant’s form 1449, which indicated that the Bunch patent had been considered May 25, 2004. The Bunch patent was not cited or commented on in the first office action.
4. In response to the first office action, applicant filed, on November 8, 2004, an amendment in which language was added to independent claims 1 and 13 that was intended by the undersigned to more explicitly define what undersigned believed was inherent in those claims. Moreover, independent Claim 19 was added, and that claim included all of the language of amended claim 1, and further included the language “consisting essentially of” in regard to applicant’s conduit system.
5. A final office action was issued on January 26, 2005. In the final office action, the Bunch patent is the only reference relied upon.
6. In section 3 of the final office action, claims 1-3, 7, 9, 11, 13-16 and 19-20 are stated as rejected under 35 USC 102(b) as anticipated by Bunch. In that section, there is a statement that “The intake and outlet portions [sic] are formed in one piece in an assembly”, apparently referring to claim 9.
7. Sections 4, 5 and 6 of the final rejection appear to relate to a rejection of claims 4-6, 10 and 13-18 under 35 USC 103.

8. In section 5, the office action states, *inter alia*, “Regarding claims 13-18, **although Bunch fails to explicitly disclose a method for cleaning a landscape surface, Bunch’s disclosure provides the basic steps required to develop a method as recited by the applicant of the present invention.**” (emphasis added)

9. In section 6, referring to method claims 13-18, the analysis begins “Bunch discloses a portable blower/vacuum handle arrangement 10 that is capable of cleaning a landscape surface.....Later in that section, there is a statement that “**Although Bunch fails to explicitly disclose a method for cleaning a landscape surface, it would have been obvious to one of ordinary skill in the art at the time of the invention to develop a method because Bunch’s disclosure provides the basic steps required to develop a method as recited by the applicant of the present invention.**” (emphasis added)

10. The examiners and the undersigned have had several phone conversations regarding the propriety of the final rejection, and the substance of the final rejection. A form 413A faxed by undersigned to examiner Saldano on March 11, 2005 (exhibit A) summarizes issues sought to be raised by the undersigned. Those issues were discussed with Examiner Saldano on March 17, 2005, with examiners Saldano and Shackelford on March 23, 2005, and with examiner Saldano on March 24, 2005. Subsequent faxes to examiner Saldano (Exhibits B and C) may provide additional information on issues discussed in the conferences.

11. In the conference of March 23, 2005, the examiners proposed to issue a paper clarifying the basis for certain rejections, and restarting the period of the final rejection. The examiners stated that in such a clarifying paper, the statutory basis for rejection of Claims 13-16 would be 35 USC 102 and that the basis for rejecting claims 17 and 18 would be 35 USC 103. Examiner Saldano also agreed to discuss with her supervisor whether additional language in claim 13 that explicitly recited that air was being drawn into the intake of the cleaning device, along with dirt/debris and landscape rock would patently distinguish claim 13 from the pond cleaning disclosure of Bunch.

12. On March 24, 2005, undersigned sent the fax that is Exhibit C to examiner Saldano. Examiner Saldano called the undersigned later that day and stated that her supervisor said such additional recitation of air would not make claim 13 patentable over Bunch. Undersigned asked for the reasons, and the only comment provided by the examiner was that air may be found in water. Undersigned then inquired as to whether such a claim, if formally submitted, would be entered and examiner Saldano replied that it might raise new issues and might therefore not be entered.

III Additional Comments regarding the foregoing facts.

It is believed useful for undersigned to comment regarding certain of the matters referenced in the statement of facts. In some of the phone conversations between applicant's attorney and the examiners, applicant's attorney was asked to comment on a matter, or had a perception of the examiners' position on a matter. Thus, these comments are offered as applicant's attorney's statement, and in the belief that the examiners will comment, supplement, agree or disagree with as they feel appropriate.

In the phone conference of March 23, 2005, there was considerable discussion of the rejection of method claims 13-18, and particularly to the statement made twice in the final office action that "although Bunch fails to explicitly disclose a method for cleaning a landscape surface". The examiners' position was that by that statement they were not stating that Bunch did not disclose a method for cleaning a landscape surface, but rather that Bunch did not "explicitly" make such a disclosure. The examiners also commented that the **title** of the Bunch patent was directed to an "Apparatus", and that any confusion between whether section 102 or 103 was the basis for the final rejection was because the examiners was covering that issue either way. Undersigned stated that apart from the fact that he disagreed with the examiners, and felt that applicant was entitled to a clear statement of the statutory basis for the rejection, he was mystified as to how the title of Bunch somehow justifies the examiners statement that Bunch was not explicitly disclosing a method, when Bunch, at column 3, line 23, launches into a detailed explanation of the manner in which his apparatus is used. In addition, undersigned said he was also surprised by the issues relating to "formed in one piece" (the language of

claims 9-11) and “formed as one piece in an assembly” (the language used by the examiner in the final rejection), since paragraph 0013 of the specification appeared to the undersigned to draw a distinction between those concepts, and since the examiner, in the first office action, appeared to understand the language “formed in one piece” in the manner intended by applicant.

At one point in the phone discussions, undersigned was asked why the amendment of claim 13 was made (the examiners had stated that had there been no amendment, and they had issued a rejection based on Bunch, making that rejection final would probably not have been proper). Undersigned explained that the amended language of claims 1 and 13 were intended to define what he believed was inherent in the original claims, i.e. that the invention contemplated landscape rock being drawn at least partially into the intake. Since that was believed inherent in the original claims, the amendment language was intended to make that feature more explicit, but wasn’t intended to change the subject matter that applicant was seeking to claim. Claim 19 was presented to further define against the cited references, by using the phrase “consisting essentially of” to limit the structure of applicant’s conduit system. Claim 19 included all of the language of claim 1, along with the “consisting essentially of” language, so that Claim 19 is essentially a more limited claim than claim 1. There is no discussion of that language in the final rejection.

In the phone conference of March 17, 2005,

1. Undersigned explained his position on the propriety of the final rejection, and also his concerns about the rejection, particularly the uncertainty over the basis on which the method claims 13-18 were being rejected (102 or 103), the issue regarding claim 19, and the language of claims 9-11.
2. Examiner Saldano maintained that the final rejection was proper, even though Bunch had been cited in the IDS and reviewed by the examiner. She said that since applicant had amended the claims, in light of the first office action, a final rejection was proper.
3. Regarding claim 13, examiner Saldano initially stated that the rejection of method claims 13-18 was based on 103, not 102, even though section

3 of the office action stated that claims 13-16 were rejected under 35 USC 102. During the discussion, she stated that the Bunch patent disclosed cleaning a landscape surface. Undersigned, while disagreeing with that position, noted that on 2 occasions in the final, there was a statement that **“although Bunch fails to explicitly disclose a method for cleaning a landscape surface”**, and that he viewed the foregoing statement in the final as contradicting the examiner’s position stated during the phone conference. Undersigned also stated he viewed reviewing but not applying Bunch patent in the first office action as consistent with his argument the examiner must have viewed Bunch as not disclosing a method for cleaning a landscape surface. Undersigned also asked that if the interpretation of Bunch stated in the phone conference by the examiner was correct, why wasn’t the rejection based on 35 USC 102. The examiner then said that it probably should have been.

4. Regarding claims 9-11, undersigned noted that in citing to paragraph 0013 regarding “formed in one piece” versus “formed as one piece in an assembly” he was trying to follow an earlier suggestion of examiner Shackelford that he find support in the specification that distinguished the language “formed in one piece” from the examiner’s position that components were “formed as one piece in an assembly”

IV. Points to be reviewed

A. Whether the final rejection should be withdrawn

Applicant respectfully submits that the final rejection was not proper and should be withdrawn.

MPEP section 904.03 in regard to an examiner’s search, states, *inter alia*, that

The examiner must fully consider all the prior art references cited in the application, including those cited by the

applicant in a properly submitted Information Disclosure Statement.

The best reference should always be the one used.

Sometimes the best reference will have a publication date less than a year prior to the application filing date, hence it will be open to being overcome under 37 CFR 1.131. In these cases, if a second reference exists which cannot be so overcome and which, though inferior, is an adequate basis for rejection, the claims should be *additionally* rejected thereon.

In all references considered, including nonpatent, foreign patents, and domestic patents, the examiner should study the specification or description sufficiently **to determine the full value of the reference disclosure relative to the claimed or claimable subject matter. (emphasis added)**

On the facts, and the record, it is respectfully submitted that Bunch is clearly the best reference, in the examiners' view. If Bunch can be applied under 35 USC 102 (or even 35 USC 103) in the manner articulated by the examiners in the phone conferences, it is clearly their best reference, and it was the best reference at the time of the first office action. That reference was reviewed and not applied in the first office action (which was based on 35 USC 103), and is now cited and relied upon under 35 USC 102 against claims that have additional language that seek to make more explicit the subject matter of the original claims, but do not switch the subject matter of those claims.

Moreover, if the final rejection is not ruled premature, applicant will effectively be denied a full and fair hearing, as required by MPEP 706.07. That section states, *inter alia*.

Before final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection. Switching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of

references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection.

While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. But the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal. However, it is to the interest of the applicants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits. (emphasis added)

If Bunch is as relevant as the examiners now contend, it was always the best reference. Had Bunch had been cited in the first office action, against claims that were directed to very similar subject matter as the claims now under final rejection, applicant would have been entitled to seek an interview with the examiners, and to amend the claims or to argue the claims. Thus, applicant could have put before the examiners the claim amendments set forth in the accompanying amendment. If the final rejection is maintained, the examiners may refuse to allow applicant to submit those claims in this application, therefore requiring applicant to file a continuing application (or a request for continued examination) to get those issues before the examiners. That concern is

heightened by examiner Saldano's statement that a claim such as amended claim 13, if presented formally, could be considered as raising new issues and might not be entered. That would deny applicant the full and fair hearing to which applicant is entitled in this application, as explained in MPEP section 706.07.

It is recognized that MPEP section 706.07a states that

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

However, it is respectfully submitted that if such a final rejection is based on the best reference, and that best reference was before the examiner before the first office action, reviewed and not applied by the examiner in the first office action, and is now applied against claims that are not seeking to switch the subject matter applicant is claiming, but rather are seeking to more explicitly define the subject matter that has been presented from the beginning in this application, issuing a final rejection based on Bunch is not really necessitated by applicant's amendment. Rather, the final rejection is based on the best reference that was always before the examiners (from prior to the first office action) now being first applied in a way that effectively denies applicant a full and fair opportunity to understand the examiner's position, and effectively respond thereto. It is respectfully submitted that denies applicant a full and fair hearing (MPEP 706.07), and that it is not proper in this case to allow such a final rejection to be maintained.

In addition, it is respectfully submitted that the fact that the examiners suggested that they issue a clarifying paper that clarifies their position, and restarts the period of the final rejection, is evidence that not only was the best reference not applied in the first office action, the examiners' best position for applying the Bunch reference in the final rejection was not presented in the final rejection. For example, in the final rejection, claims 13-16 are stated as rejected under 35 USC 102, and claims 13-18 are also stated as rejected under 35 USC 103 (along with the rationale that begins with "**although Bunch**

fails to explicitly disclose a method for cleaning a landscape surface”). In the phone conference of March 23, 2005, the examiners stated that the position that will be articulated in the new paper is that claims 13-16 are rejected under 35 USC 102 and that claims 17 and 18 are rejected under 35 USC 103. Additionally, undersigned presumes the clarifying paper will also address the issues of “consisting essentially of” (claim 19), and “formed in one piece” versus “formed in one piece as an assembly” (claims 9-11), in light of the statement of paragraph 0013. Thus, until applicant sees the new proposed document, applicant still does not have a clear picture of the examiners’ basis for the final rejection, and that is further evidence that applicant has not had a full and fair hearing in this case to date. Withdrawal of the final rejection, and entry of the supplemental amendment, would at least require the examiners to deal with claims that are presented to be unequivocally novel over Bunch, and articulate their position in a manner that hopefully will provide the applicant with a full and fair enough picture of the examiners’ position to enable applicant to decide how to proceed in this case.

B. Appropriate action if the final rejection is withdrawn

- a. Entry of the Supplemental amendment that is being filed concurrently with this petition
 - i. Applicant respectfully submits that the supplemental amendment that is being filed concurrently with this petition should be entered, so that the examiners are required to act on that amendment. That supplemental amendment submits claims that seek to further define the applicant’s invention against the Bunch patent. If the examiners maintain their position, and reject those claims over Bunch, applicant will have the benefit of their analysis and application of Bunch to the claims of the supplemental amendment, in determining whether to appeal. Moreover, if applicant decides to appeal, at least the appeal will be of claims that have been presented against a rejection based on Bunch, with the examiners’ analysis of their reasons for rejecting the claims over Bunch a matter of record.

- b. Requirement for any subsequent action using Bunch as the primary reference to be made non final.
- i. Applicant respectfully submits that if entry of the supplemental amendment is denied, any subsequent action using Bunch as the primary reference should be required to be made non final. Thus, applicant would have an opportunity to respond to that office action, so that the record will fully and fairly reflect the positions of the applicant and the examiners, particularly with regard to Bunch.

V. Action Requested

For the foregoing reasons, it is respectfully submitted that the final rejection be withdrawn, and that either the supplemental amendment that is being filed concurrently with this petition be entered, or that any subsequent office action based on Bunch be required to be made non final, so that applicant is entitled to the full and fair hearing contemplated by MPEP 706.07..

Favorable action is respectfully requested.

Respectfully submitted,



Lawrence R. Oremland
Reg. No. 27,046
Attorney for Applicant

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Exhibit A



Privileged/Confidential

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FACSIMILE TRANSMITTAL SHEET

TO:	Examiner Lisa Saldano	FROM:	Larry Oremland
COMPANY:	US Patent and Trademark Office	DATE:	3/11/2005
FAX NUMBER:	703-746-9144	TOTAL NO. OF PAGES INCLUDING COVER:	5
PHONE NUMBER:	703-605-1167	SENDER'S REFERENCE NUMBER:	6044.102US
RE:	Serial Number 10/649,978	YOUR REFERENCE NUMBER:	

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Examiner Saldano,

Thank you for speaking to me yesterday.

In light of our discussion, I have attached a form 413A, requesting a telephone interview in this application. As I mentioned in my discussion with examiner Shackelford on Feb 23, 2005, and also in our discussion yesterday, while I am concerned about the propriety of the final rejection, I am primarily interested in getting to a resolution of this case, if that is possible. In the arguments to be presented, I have presented the arguments of items 2-4 in the order of importance to this application. For example, since the method claims are particularly important, if on reconsideration you found those to be allowable, it may be possible to resolve this case as to those claims, and provide applicant with the option to file a continuing application if he wants to seek other claims. In addition, even though I think claim 19's use of "consisting essentially of" excludes the structure of Bunch, if you felt the concept applicant was seeking to present by that claim is patentable over Bunch, but there is more appropriate language to present that that concept, I would welcome any suggestions you might have.

Exhibit A Cont.

As I mentioned to examiner Shackelford, and am repeating here, I very much want to resolve issues in this case, if that is possible.

In the request, I suggested this Monday for a telephone interview. If that is not convenient, I am available Tuesday, Thursday or Friday of next week. On Thursday and Friday I am in St Louis, but can be available.

Thank you.


Larry Oremland

Exhibit A Cont.

PTOL-413A (09-04)
Approved for use through 07/31/2006. OMB 0851-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Applicant Initiated Interview Request Form					
Application No.: 10/649,978 First Named Applicant: David N. Nelson Examiner: Lisa Saldano Art Unit: 3673 Status of Application: Under Final Rejection					
Tentative Participants: (1) Lawrence R. Oremland (2) _____ (3) _____ (4) _____					
Proposed Date of Interview: March 14, 2005 Proposed Time: 11:00 AM EST (AM/PM)					
Type of Interview Requested: (1) <input checked="" type="checkbox"/> Telephonic (2) <input type="checkbox"/> Personal (3) <input type="checkbox"/> Video Conference					
Exhibit To Be Shown or Demonstrated: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, provide brief description: _____					
Issues To Be Discussed					
Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) Propriety of Final Rej	1-7, 9-11, 13-20	Bunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Final Rejection	13-18	Bunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Final Rejection	19	Bunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) Final Rejection	9-11	Bunch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Continuation Sheet Attached					
Brief Description of Arguments to be Presented: Undersigned proposes a ... continued on next page _____ _____					
An interview was conducted on the above-identified application on _____.					
NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01). This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.					
_____ Applicant/Applicant's Representative Signature			_____ Examiner/SPE Signature		
_____ Typed/Printed Name of Applicant or Representative					
_____ Registration Number, if applicable					

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Exhibit A Cont.

Applicant: David N. Nelson
Serial No.: 10/649,978
Art Unit: 3673
Examiner: Lisa Saldano

Continuation of Form PTOL413A Section Issues to be Discussed - Brief Description of Arguments to be Presented.

. . . telephone interview to follow up on telephone discussion with Examiner Shackelford while the examiner was out of town, and specifically regarding the following issues:

1. Propriety of final rejection: the Bunch patent, which is the primary reference relied upon in the final rejection, was cited by applicant in an IDS prior to the original action, reviewed and not cited or relied upon in the original office action (which was based exclusively on 35 USC 103). Applicant's response restricted the original claims, and the Bunch patent is now relied upon as allegedly anticipating a number of those restricted claims. Undersigned believes final rejection should be withdrawn so that applicant has an opportunity to respond to the Bunch patent.
2. Rejection of method claims (13-18). In paragraph 3 of the final rejection, claims 13-16 are stated as rejected under 35 USC 102. However, there is no discussion of those claims in paragraph 2. In paragraphs 5 and 6, which are based on 35 USC 103, there is a discussion of claims 13-18, in a manner which recognizes differences between those claims and Bunch. Thus, whether those claims are rejected under 35 USC 102 is unclear. Moreover, and more importantly, in paragraphs 5 and 6, the only stated basis for the rejection is that although Bunch (which relates to a pond cleaning device) is recognized as failing to disclose a method for cleaning a landscape surface, Bunch's disclosure "provides the basic steps required to develop a method as recited by the applicant" (paragraph 5) and the "it would have been obvious to one of ordinary skillto develop a method because Bunch's disclosure provides the basic steps required to develop a method as recited by the applicant....."(paragraph 6). Undersigned is not aware of any case law that supports that analysis, and, additionally, undersigned believes that analysis is not applicable to Bunch. Specifically, apart from the fact that Bunch does not relate to a landscape surface, and uses a liquid pump to draw water and debris from the pond, Bunch also recirculates water to a nozzle 52 to break up gravel clusters. If air was recirculated in applicant's method, in the manner disclosed by Bunch, that air would blow dirt/debris back toward the intake of applicant's landscape cleaner, which would defeat rather than enhance applicant's method. This, among other reasons, is why Bunch would not be applicable to clean a landscape surface, and why it would not have been obvious from Bunch to provide applicant's method.
3. Rejection of Claim 19. The rejection identifies claim 19 as anticipated by Bunch, but does not discuss claim 19, particularly the part of claim 19 that defines the

Exhibit A Cont.

applicant's device as comprising a conduit system "consisting essentially" of the intake and outlet portions that are in fluid communication with each other, and configured to provide the landscape cleaning operations described. That language is believed to exclude a recirculating conduit structure such as found at 62, 52 of Bunch, since the recirculating conduit structure of Bunch is clearly intended to contribute to Bunch's cleaning concept.

4. The rejection of dependent claims 9-11. Those claims call for elements to be "formed in one piece" and the rejection of claim 9 states that certain of the elements are "formed as one piece in an assembly" Thus, the rejection does not track the language of the claims, and from paragraphs 0013 and 0021 of the specification, it is believed clear that "formed in one piece" means formed in one piece as a single article, rather than elements being "secured" to each other. in an assembly. Also, while paragraph 2 of the Office Action relates to claim 11, the comments regarding claim 11 do not discuss the claim language that the handle is "formed in one piece with the head assembly."

Respectfully submitted,



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Exhibit B

Privileged/Confidential

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FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Examiner Lisa Saldano	Larry Oremland
COMPANY:	DATE:
US Patent and Trademark Office	3/28/2005
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
703-746-9144	1
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
703-605-1167	6044.102US
RE:	YOUR REFERENCE NUMBER:
Serial Number 10/649,978	

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Examiner Saldano:

When we have our phone conference today, I hope we can also discuss claim 17. That claim defines the 90 degree orientation of the intake portion to the landscape surface as material is being drawn into the intake portion. See e.g. paragraph 0018 of the spec for support. Bunch teaches a gravel cleaner for a pond, which I believe is designed to be maintained at an angle other than 90 degrees during its operation (see e.g. column 3, lines 37-50). Thus, I am not sure how the art is being applied against claim 17, and besides the 4 issues raised in my prior fax, I hope I will understand the PTO's position on claim 17 after our phone conference.

Respectfully,
Lawrence R. Oremland.

Exhibit C

Privileged/Confidential

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FACSIMILE TRANSMITTAL SHEET

TO:	Examiner Lisa Saldano	FROM:	Larry Oremland
COMPANY:	US Patent and Trademark Office	DATE:	3/28/2005
FAX NUMBER:	703-746-9144	TOTAL NO. OF PAGES INCLUDING COVER:	3
PHONE NUMBER:	703-605-1167	SENDER'S REFERENCE NUMBER:	6044.102US
RE:	Serial Number 10/649,978	YOUR REFERENCE NUMBER:	

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Examiner Saldano:

Late in our phone conference yesterday, when I suggested a revision of claim 13 to explicitly state that the applicant's method draws air, dirt and/or debris and landscape rock into the inlet, because I believe that would unequivocally distinguish that claim from Bunch, you indicated you would review that with your supervisor, Examiner Shackelford (I didn't realize she had apparently left the conference call by then), and get back to me today. You asked if the spec supported that language, and I pointed you to paragraph 0015. While I continue to believe that concept is implicit in claim 13 as is, your explanation of your rejection suggests you don't share my view, and I am happy to work with you and examiner Shackelford to find language that unequivocally defines that concept, because I believe that with such language claim 13 would not be

obvious from Bunch. Bunch is clearly directed at a pond cleaning concept, and to modify Bunch to provide the method of claim 13 would require making significant changes to Bunch (e.g. first determining that there would be motivation to use Bunch to clean a landscape surface of the type to which applicant's invention is directed, eliminating the manifold and fluid jets that are described by Bunch as "one of the novel features of the [Bunch] invention" (see column 4, lines 48-50), etc.

Thus, I believe strongly that if you and examiner Shackelford were satisfied claim 13 was unequivocally novel over Bunch, you would also conclude that the claim was not an obvious modification or application of Bunch.

In that spirit, and since you were going to talk with examiner Shackelford today, I have attached a proposed modification of claim 13 to seek to provide you with a claim that you would find unequivocally novel over Bunch. I would also welcome your suggestions if you and examiner Shackelford felt there was a better way to do that.

In any event, I look forward to hearing from you.

Respectfully,

Lawrence R. Oremland.

Claim 13 (currently amended). A method for cleaning a landscape surface that is directly exposed to the atmosphere of dirt and debris while enabling landscape rock to remain a part of the landscape surface comprising the steps of (a) providing a cleaning device configured for attachment to a vacuum source, the device having a conduit system with an intake portion and an outlet portion in fluid communication with each other, the intake portion having a distal end with an intake opening through which air that is about the landscape surface, landscape material that includes dirt and/or debris and landscape rock can be drawn into the intake portion, the intake and outlet portions configured to (i) enable the intake portion to be held in a downward orientation with the opening disposed closely on top of the landscape surface so that the vacuum in the intake portion draws air that is about the landscape surface, landscape material which includes dirt and/or debris and landscape rock from the landscape surface into the intake portion, and (ii) resist landscape rock from passing through the outlet portion (b) attaching the outlet portion to a vacuum source, providing a vacuum in the outlet portion and holding the cleaning device with the intake portion extending downward to the landscape surface so that the opening contacts the landscape surface, and maintaining the intake portion in the downward orientation with the opening in contact with the landscape surface for a period sufficient to draw air that is about the landscape surface, dirt and/or debris and some landscape rock from the landscape surface into the intake portion, and (c) lifting the intake portion off the landscape surface landscape in a manner that allows the pressure state in the conduit system to cause landscape rock in the intake portion to be redeposited in situ on the landscape surface.

Application No. 10/649,978
Supplemental amendment

Copy



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Date: March 28, 2005

By:

Lawrence R. Oremland
Signature of person depositing Documents
Lawrence R. Oremland

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/649,978	Confirmation No.	6716
Applicant	:	David N. Nelson		
Filed	:	August 26, 2003		
TC/A.U.	:	3673		
Examiner	:	Lisa M. Saldano		
Docket No.	:	6044.102US		
Customer No.	:	N/A		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Supplemental Amendment

Sir:

This amendment is being filed concurrently with a petition to withdraw the final rejection issued January 26, 2005, and supplements the amendment filed November 12, 2004. If applicant has a right to entry to this amendment, e.g. because the examiners proposal to issue a clarifying paper and restart the period of the final rejection (as discussed in the petition) amounts to a withdrawal of the original final rejection), please enter it. If applicant does not have a right to entry of this amendment without granting of the petition, if the petition is granted, please enter this amendment.

Please enter an amendment of the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims, which begins on page 2 of this paper.

Remarks/Arguments begin on page 6 of this paper.

Fees: It is not believed any fees are due in connection with this filing, but if any are due, it is respectfully requested that they be charged to deposit account no. 50-1905. A duplicate of this page is attached.

Amendments to the Claims

Listing of Claims:

Claim 1 (currently amended). A device for cleaning a landscape surface that is directly exposed to the atmosphere, comprising

a. a conduit system with an intake portion and an outlet portion in direct fluid communication with each other; the outlet portion including a conduit that has a smaller inner diameter than the inner diameter of the intake portion, the outlet portion configured for attachment to a vacuum source, [and] the intake portion having a distal end with an intake opening through which landscape material can be drawn into the intake portion from the surface of the landscape, and the intake portion having a substantially constant cross section area from the intake opening to the outlet portion,

b. the conduit system being configured to (i) enable the intake portion to be held in a downward orientation toward the surface of the landscape with the intake opening disposed against the surface of the landscape, (ii) allow atmospheric air that is about the landscape surface, landscape rock, dirt and debris to be drawn into the intake portion and transmitted through the outlet portion while retarding transmission of landscape rock from the intake portion through the outlet portion, and (iii) provide a pressure state within the intake portion such that when the intake portion is lifted off the surface of the landscape, the landscape rock in the intake portion will be deposited on the surface of the landscape.

Claim 2 (original). A device as defined in claim 1, wherein the intake portion extends at a predetermined angle to at least part of the outlet portion.

Claim 3 (original). A device as set forth in claim 2, wherein the angle between the intake portion and the part of the outlet portion is not more than 135 degrees.

Claim 4 (original). A device as defined in claim 2, wherein the angle between the intake portion and the part of the outlet portion is from 75 to 135 degrees.

Claim 5 (original). A device as defined in claim 2, wherein the angle between the intake portion and the part of the outlet portion is from 90 to 105 degrees.

Claim 6 (original). A device as set forth in claim 1, wherein the angle between the intake and outlet portions is about 90 degrees.

Claim 7 (concurrently amended). A device as set forth in claim 2, wherein the cleaning device is configured such that the intake portion can be lifted vertically with respect to the landscape surface, and includes a pair of handles located to (i) enable the intake portion to be oriented vertically at about 90 degrees with respect to a landscape surface with the intake opening disposed against the landscape surface, and (ii) enable the intake portion to be lifted vertically with respect to the landscape surface.

Claim 8 (canceled).

Claim 9 (currently amended). A device as set forth in claim 1, wherein the intake portion is coupled to a head assembly, and the outlet portion is monolithically formed in one piece with the head assembly.

Claim 10 (currently amended). A device as set forth in claim 9, wherein the outlet portion comprises an elbow shaped conduit monolithically formed in one piece with the head assembly.

Claim 11 (currently amended) A device as set forth in claim 10 further including at least one handle monolithically formed in one piece with the head assembly.

Claim 12 (canceled)

Claim 13 (currently amended). A method for cleaning a landscape surface that is directly exposed to the atmosphere of dirt and debris while enabling landscape rock to remain a part of the landscape surface comprising the steps of (a) providing a cleaning device configured for

attachment to a vacuum source, the device having a conduit system with an intake portion and an outlet portion in fluid communication with each other, the intake portion having a distal end with an intake opening through which atmospheric air that is about the landscape surface, landscape material that includes dirt and/or debris and landscape rock can be drawn into the intake portion, the intake and outlet portions configured to (i) enable the intake portion to be held in a downward orientation with the opening disposed closely on top of the landscape surface so that the vacuum in the intake portion draws atmospheric air that is about the landscape surface, landscape material which includes dirt and/or debris and landscape rock from the landscape surface into the intake portion, and (ii) resist landscape rock from passing through the outlet portion (b) attaching the outlet portion to a vacuum source, providing a vacuum in the outlet portion and holding the cleaning device with the intake portion extending downward to the landscape surface so that the opening contacts the landscape surface, and maintaining the intake portion in the downward orientation with the opening in contact with the landscape surface for a period sufficient to draw air that is about the landscape surface, dirt and/or debris and some landscape rock from the landscape surface into the intake portion, and (c) lifting the intake portion off the landscape surface landscape in a manner that allows the pressure state in the conduit system to cause landscape rock in the intake portion to be redeposited in situ on the landscape surface.

Claim 14 (original). A method as set forth in claim 13, wherein the intake portion is lifted vertically off the landscape surface.

Claim 15 (original). A method as set forth in claim 14, wherein the intake portion is disposed at a predetermined angle to at least part of the outlet portion, and the outlet portion comprises a conduit with an inner diameter that is smaller than the inner diameter of the intake portion.

Claim 16 (original). A method as set forth in claim 13, wherein the intake portion is disposed at a predetermined angle to at least part of the outlet portion, and the outlet portion comprises a conduit with an inner diameter that is smaller than the inner diameter of the intake portion.

Claim 17 (currently amended) A method as set forth in claim 14, wherein the intake portion is oriented at about 90 degrees to the landscape surface as the atmospheric air from about the landscape surface, dirt and/or debris and landscape rock are drawn into the intake portion.

Claim 18. (currently amended). A method as set forth in claim 17, wherein the intake portion is disposed at a predetermined angle to at least part of the outlet portion, [and] the outlet portion comprises a conduit with an inner diameter that is smaller than the inner diameter of the intake

portion, and a pair of handles are connected with the intake portion in a configuration that enables an operator to grasp both handles and manipulate the intake portion to a position in which the intake portion is located on the landscape surface at an orientation of about 90 degrees to the landscape surface and to lift the intake portion vertically with respect to the landscape surface.

Claim 19 (canceled).

Claim 20 (previously submitted) A device as set forth in claim 1, wherein the outlet portion is disposed in a head assembly configured for attachment to the intake portion with the outlet portion in direct fluid communication with the inlet portion.

Claim 21 (new). A method as set forth in claim 13, wherein the step of providing a cleaning device consists essentially of

a. providing a conduit system consisting essentially of an intake portion and an outlet portion in direct fluid communication with each other; the outlet portion including a conduit that has a smaller inner diameter than the inner diameter of the intake portion, the outlet portion disposed in a head assembly configured for attachment to the intake portion with the outlet portion in direct fluid communication with the inlet portion, the outlet portion configured for attachment to a vacuum source and the intake portion having a distal end with an intake opening through which landscape material can be drawn into the intake portion from the surface of the landscape

b. the conduit system being configured to (i) enable the intake portion to be held in a downward orientation toward the surface of the landscape with the intake opening disposed against the surface of the landscape, (ii) allow atmospheric air from about the landscape surface, landscape rock, dirt and debris to be drawn into the intake portion and transmitted through the outlet portion while retarding transmission of landscape rock from the intake portion through the outlet portion, and (iii) provide a pressure state within the intake portion such that when the intake portion is lifted off the surface of the landscape, the landscape rock in the intake portion will be deposited on the surface of the landscape.

Remarks/Arguments

Entry of this supplemental amendment and reconsideration of this application is respectfully requested.

This supplemental amendment is being filed concurrently with a petition under CFR 1.181 to withdraw the final rejection issued January 26, 2005 and to require entry of this supplemental amendment, which petition is incorporated by reference herein. It is intended to present an amendment that would have been presented if the final rejection of January 26, 2005 had been issued as a non final rejection. In the final rejection of January 26, 2005, Bunch US patent 5,655,245 is the primary reference relied upon. In several phone conversations with examiners Saldano and Shackelford subsequent to the final rejection, undersigned sought clarification of the examiner's reliance on Bunch in relation to the claims of the previous amendment, and expressed his views on why those claims were believed to clearly distinguish from Bunch. As it became clear to the undersigned that the examiners did not share those views, and it is applicant's intention to unequivocally distinguish this invention from Bunch, the amendment presented above is intended to do that, rather than argue the point.

In the discussions with the examiners, apart from the propriety of the final rejection, which is the subject of the petition to withdraw the final rejection, undersigned and the examiners discussed the following aspects of the present invention:

1. applicant's method of cleaning a landscape surface (claims 13-18)
2. Claim 19 and its use of the language "consisting essentially of", and
3. Claims 9-11, and their use of the language "formed in one piece"

The following remarks track the foregoing issues, as well as the other claims in this application.

1. **Claims 13-18.** Regarding claims 13-18, claim 13 has been amended above to seek to unequivocally direct that claim, *inter alia*, to a method that cleans a **landscape surface that is directly exposed to the atmosphere**, and where **atmospheric air from about the landscape surface**, dirt and/or debris and landscape rock are drawn into the intake portion of the cleaning device, and handled in the manner described by the claim.

It is respectfully submitted that such a method is not disclosed by Bunch, and there is no evidence that one of ordinary skill would be motivated to use Bunch to clean such a landscape surface, in the manner recited by the claim. Bunch is directed at cleaning gravel at the bottom of a pond, not to cleaning a landscape surface. The American Heritage Dictionary, Second College Edition, 1982, defines a "landscape" as "a view or vista of scenery **on land**" and defines "**land**" as "the solid ground of the earth, esp. as distinguished from the sea" (emphasis added). It is respectfully submitted that by that definition, the bottom of a pond is not a landscape surface. Moreover, Bunch is expressly directed to a concept for cleaning gravel from the bottom of a pond, by drawing water and gravel into his cleaning device, breaking up clusters of gravel as they are being drawn from the bottom of the pond, and effectively using the water that carries the gravel to wash the gravel. Moreover, Bunch describes "one of the novel features of the [Bunch's] invention" as projecting fluid radially inward (e.g. through openings 56, 58) to break up gravel clusters.

Thus, to apply Bunch to meet claim 13, one of ordinary skill would have to decide that despite the fact that Bunch is directed at cleaning a pond, effectively by washing the gravel with the water that carries the gravel, uses a water pump to effect that objective, and has as an important part of his invention the projecting of fluid radially inward to break up gravel clusters, there is motivation to apply Bunch to cleaning a landscape surface by drawing atmospheric air from about the landscape surface, dirt and/or debris and landscape rock into an intake of a cleaning device, and perform the other recited steps of claim 13. Moreover, one of ordinary skill would have to eliminate the radially directed fluid that is "one of the novel features" of Bunch, and is used to break up gravel clusters. Bunch explains in some detail the manner in which gravel clusters form in a pond, and how his invention breaks up those clusters as one of the novel features of his cleaning concept. Cleaning a landscape surface, according to the present invention, does **not** involve clusters of material that need to be broken up, and would **not** involve radially directed fluid to break up such clusters. In fact, it is respectfully submitted that, if anything, the use of radially directed fluid, as in Bunch, would impede applicant's method, because it would create the likelihood, or at least the potential, that fluid would be directed toward the inlet to the intake, and if that were to happen, the fluid would be hindering, rather than helping applicant's method. Accordingly, to make the modifications that would be

necessary in Bunch, in order to produce a method according to claim 13, would require recognizing the applicability of Bunch to cleaning operations other than ponds, and also eliminating features of Bunch that Bunch specifically considered novel aspects of his concept. The only motivation to do that would come only from applicant's disclosure, and not from anything in Bunch. Therefore, it is respectfully submitted that Bunch does not disclose the invention of claim 13, and it would not have been obvious to modify Bunch and use Bunch in a method according to claim 13. Hence, claim 13 is patentable over Bunch.

Claims 14-18 and 21 include the recitations of claim 13, and are submitted to be patentable over Bunch for the reasons set forth above. Moreover, claims 14-18 further define applicant's method in a manner that is not disclosed in or obvious from Bunch. For example, Claim 17 further defines, *inter alia*, the intake portion being oriented at about 90 degrees to the landscape surface as the atmospheric air from about the landscape surface, dirt and/or debris and landscape rock are drawn into the intake portion. Claim 18 further defines, *inter alia*, and a pair of handles connected with the intake portion in a configuration that enables an operator to grasp both handles and manipulate the intake portion to a position in which the intake portion is located on the landscape surface at an orientation of about 90 degrees to the landscape surface and to lift the intake portion vertically with respect to the landscape surface. Bunch discloses handles 48, and although Bunch states, at column 4, lines 57-59, that the bottom end of the gravel cleaner need not be angled, or can have a different angle than depicted, whichever is more comfortable for a particular operator, it is respectfully submitted that with Bunch's disclosure, it is not at all clear how or why the gravel cleaner would not be angled, at least to some degree. For example, it would appear that Bunch would have to extend at least at some angle to be operated in the manner disclosed by Bunch, in order to be comfortably operated by an operator. Moreover, with handles 48 of Bunch, it is also not seen how Bunch would be comfortably operated by an operator unless Bunch were oriented at an angle to the pond bottom. Bunch explicitly teaches that in cleaning a pond, an operator would grasp handles 48 by standing behind the gravel cleaner (column 3, lines 37-50), and that the inclination of the cleaner allows the operator to have greater control over it while putting less strain on an operator's back. It is respectfully submitted that it is simply not apparent how the device of

Bunch could be oriented, operated and lifted, in the manner described by claims 17 and 18 of the present application, in view of the description of column 3, lines 37-50 of Bunch.

2. **New claim 21, which is presented in place of Claim 19** In the discussions with the examiners, undersigned noted that the use of “consisting essentially of” while written in light of the references cited in the first office action, would distinguish from Bunch, because it would exclude the conduit portion 62, the manifold 52 and the apertures 56, 58 through which fluid is directed radially into the intake of Bunch to break of the gravel clusters. Those portions of Bunch are part of Bunch’s conduit system for effecting cleaning of the gravel clusters from a pond. The examiners position, while not articulated in the final rejection, was that the use of “consisting essentially of” in defining the conduit system did not exclude the portions 62, 52, 56 and 58 of Bunch. While undersigned disagrees, claim 19 has been withdrawn, and claim 21 has been presented, which is dependent from method claim 13, and which defines the cleaning device that is provided according to applicant’s invention “consists essentially” of the conduit system that itself consists essentially of the recited components. Since those components do not include the type of conduits such as 62, 52, 56 and 58 of Bunch, and since those components of Bunch are clearly essential parts of Bunch’s disclosed pond cleaning system, it is respectfully submitted that it is not disclosed in Bunch, or an obvious modification of Bunch, to exclude those components. Therefore, it is respectfully submitted that claim 21 is patentably distinct from Bunch.
3. **Claims 9-11** In the discussions with the examiners, the examiners initially invited undersigned to point to portions of the specification that would draw a distinction between the concept of “formed in one piece” and “formed as one piece in an assembly” as described by the examiners in the office action as meeting that language. Undersigned pointed, e.g. to paragraph 0013 and noted that paragraph 0013 explicitly drew a distinction between components that are “formed in one piece” and components that are secured together (i.e. “formed as one piece in an assembly”). The examiners suggested that if the word “monolithically” preceded “formed in one piece” such language would clearly exclude the concept of “formed as one piece in an assembly”. Moreover, in response to undersigned’s inquiry as to

whether there were any new matter issues in adding that word, the examiner's stated unequivocally that the word "monolithically" is clearly supported by paragraph 0013 and raises no new matter issues. Accordingly, it is respectfully submitted that claims 9-11 are clearly novel over Bunch.

4. **Remaining Claims** Claim 1 has also been amended above to define the applicant's device as configured to be used to clean a landscape surface that is directly exposed to the atmosphere. For reasons similar to those set forth above, it is respectfully submitted that Bunch is not designed to clean a landscape surface. In addition, claim 1 has been amended to further recite, *inter alia*, that the intake portion has a substantially constant cross section area from the intake opening to the outlet portion. Support for that recitation is clearly provided by the figures, and by the depiction and description of the inside diameter 121 of the intake. Bunch is specifically directed to a pond cleaner that includes a relatively wide upper housing 18, an inwardly tapering lower portion 28, and a relatively narrow intake 20. Bunch's outlet 34 is in direct fluid communication with the relatively wider upper housing 18. At column 2, lines 45-57, Bunch explains the structure and relation of outlet 34, upper housing 18, inwardly tapering lower portion 28 and lower housing portion 20. Bunch further explains, at column 3, lines 51-65, that the pumping rate of water through outlet 34 is such that the water velocity through the lower [relatively narrower] housing 20 is sufficient to lift the gravel into the lower housing 20, but not into the outlet 34. Clearly, Bunch considers the structure and relation of the upper and lower housing portions 18, 20, the inwardly tapering portion 28, and the outlet to be an important aspect of his pond cleaner. That structure and relation does not include, *inter alia*, **an intake portion with a substantially constant cross section area from the intake opening to the outlet portion**, as recited by amended claim 1. In Bunch, if the lower housing 20 is the intake, it directly communicates with a wider upper housing 18, not with a smaller diameter outlet conduit. On the other hand, if the upper and lower housings 18, 20 are the intake, such an intake clearly does not have an intake with a substantially constant cross section area from the inlet opening to the outlet portion. Moreover, to modify Bunch, to provide such structure would require giving up Bunch's basic pond cleaning structure, and would be apparent for cleaning a

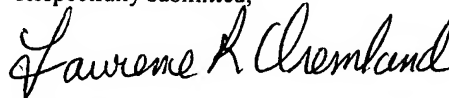
landscape surface only from applicant's disclosure, and not from any teaching or suggestion of Bunch.

In addition, with respect to claims 4-6, which define preferred angles between the intake portion and part of the outlet portion, in the final rejection, the examiners state that those angles are a matter of design choice, and that no criticality has been assigned to those angles. It is respectfully submitted that such a statement is not evidence that one of ordinary skill would be motivated to provide such angles. Moreover, the specification, at paragraph 0018, notes that the preferred angle (90 degrees) in combination with the preferred orientation of the intake relative to the landscape surface provides a favorable pressure gradient within the cleaning device as material is being drawn into the cleaning device. It is respectfully submitted that either such evidence should be provided, or the rejection of claims 4-6 based on Bunch should be withdrawn.

Accordingly, for the reasons set forth above, it is respectfully submitted that the present invention, as set forth by claims 1-7, 9-11, 13-18 and 20, 21 above, is not disclosed in or obvious from Bunch or any of the other cited references.

Favorable action is respectfully requested.

Respectfully submitted,



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